A

DATO' TING CHECK SII

v.

DATUK HJ MOHAMAD TUFAIL MAHMUD & ORS

B

HIGH COURT SABAH & SARAWAK, KUCHING
HAMID SULTAN ABU BACKER JC
[ORIGINATING PETITION NO: 26-05-2006-II]
26 JULY 2007

C ***COMPANY LAW:*** *Members' rights - Oppression - Allegation of - Whether proved - Petition for relief - Quasi partnership - Whether company a quasi partnership - Whether personal relationship based on mutual confidence established - Whether petitioner proved acts complained of amounts to oppression - Whether there was inordinate delay to pursue*
D *petitioner's grievances - Whether a fit and proper case to entertain application under s. 181 of Companies Act 1965*

The petitioner herein filed a petition pursuant to s.181 of the Companies Act 1965 (CA 1965), *inter alia*, seeking the following
E reliefs: (i) a declaration that the petitioner was entitled to be a director of the ninth respondent; (ii) an order that the first to seventh respondents reinstated the petitioner as managing director of the ninth respondent at a monthly salary of RM17,000; and (iii) an order that the first respondent cease forthwith to be the
F managing director of the ninth respondent. The petitioner submitted that he and the first respondent were founding subscribers and directors of the ninth respondent. The object and purpose for the incorporation of the ninth respondent was to undertake a joint venture business with the Malaysian Group and
G the Japanese Group. It was the petitioner's allegation that the joint venture businesses were of quasi-partnership business in nature and based on mutual trust, confidence and reciprocal duties to act with utmost good faith to each other. The petitioner alleged that he was the one who was responsible for initiating the
H investment and took charge of the business operation. Until 2003, the first respondent was not involved in the active management of the ninth respondent. However, in that same year, relationship between the petitioner and the first respondent deteriorated. The petitioner submitted that he was forced to resign as managing
I director under the threat of the first respondent. The petitioner also alleged that the first respondent had wrongfully ousted the

petitioner as managing director and excluded the petitioner from his control of the daily management and operations of the ninth respondent company and in doing so, the first respondent was aided and abetted by the second to sixth and seventh respondents. According to the petitioner, the affairs of the company were being conducted or the powers of the directors were being exercised in a manner oppressive to him or in disregard of his interests as a member of the company. In opposing the petition, the Malaysia Group and the Japanese Group, *inter alia*, submitted that the petition ought to be dismissed on the grounds that (i) the ninth respondent was not a quasi partnership; (ii) there were no legitimate expectations or understanding between the petitioner with any of the parties to support the allegation that the petitioner was to always be the managing director of the ninth respondent company; and (iii) that the petitioner had failed to prove that the affairs of the ninth respondent company had been concluded in a manner which was oppressive or prejudicial to the petitioner to warrant the granting of any of the prayers in the petition.

Held (dismissing the petition with costs):

(1) A member of the company would be able to bring himself within the section if he could show that the value of his shareholding in the company had been seriously diminished or jeopardized by reason of a course of conduct on the part of those persons who have *de facto* control of the company. The change in the appointment of managing director or directors of the company done according to law and articles of association and/or shareholders' agreement could not be a subject matter of challenge under this provision. (paras 11 & 12)

(1a) Personal relationship based on mutual confidence is a pre-requisite and a fundamental element which needs to be established to succeed in a claim relating to quasi partnership. The petitioner herein did not show any personal relationship based on mutual confidence with the seventh respondent, a corporate body. This was not a fit and proper case to entertain an application under s. 181 of CA 1965. (para 17)

(2) Section 181 relief is not relevant in cases where there is disagreement to managerial decisions or policy decisions. Such conduct does not necessarily constitute oppression or disregard of a member's interests. Section 181 remedy is only applicable to a case where the oppressive conduct affects the petitioning member qua member. The oppression complained of must be continuing at the time the action is brought. The burden of proof is upon the petitioner, who must prove his allegations by direct evidence or by reasonable inference to be drawn from the documents. The *sine qua non* to proof is that the petitioner must satisfy the court the act complained of if true amounts to oppression. (paras 13 & 14)

(3) There was no credible evidence or contemporary documents to show that there was collateral agreement or understanding that the petitioner could be the managing director and could always be involved in the management and control of the ninth respondent, notwithstanding that he was only a minority shareholder. The conduct of the respondents have been fair and reasonable to the minority shareholders as a whole and the ninth respondent has been run within its constitutional framework. The management decision was according to sound corporate and commercial reasons. The action and decision of the petitioner after having resigned as managing director and creating disharmony in the economic activities of the company, notwithstanding that there was no allegation by him that his profits as shareholder had been affected, did not strengthen the *bona fide* of his claim. (para 17)

(4) The conduct of the petitioner was unreasonable to insist that he hold the position of the managing director when there was evidence to show that he resigned and supported the appointment of the first respondent to be the managing director. The allegations of the petitioner were stale as it originated from 2003, and in any event there was an inordinate delay even to pursue the petitioner's grievance. An order to force the shareholders to buy out the petitioner's shares or to wind up the ninth respondent purely on the basis that there was misunderstanding between the parties was not appropriate under s. 181 remedy, more so when the ninth respondent was making profits under a good

management which in principle subscribed to corporate transparency and accountability. Hence, the petitioner had not shown that the alleged wrong doers have acted in such a way that they have breached the provisions of s. 181 of CA 1965. (para 17)

Case(s) referred to:

Caparo, Industries plc v. Dickman166 [1990]1 All ER 568 ***(refd)***
Ebrahimi v. Westbourne Galleries Ltd & Ors [1973] AC 360 ***(refd)***
Eng Man Hin & Anor v. King's Confectionery Sdn Bhd [2005] 8 CLJ 77 HC ***(refd)***
Hoy Pak Kwai v. Leong Kon Fah & Ors [2007] 1 CLJ 121 CA ***(refd)***
Jenkins v. Enterprise Gold Mines NL [1991] 6 ACR 539 ***(refd)***
Loh Eng Leong & Ors v. Lo Mu Sen & Sons Sdn Bhd & Ors [2000] 8 CLJ 338 HC ***(refd)***
Peck Constance Emily v. Calvary Charismatic Centre Ltd [1991] 3 CLJ 2997; [1991] 4 CLJ (Rep) 1038 HC ***(refd)***
Prudential Assurance Co Ltd v. Newman Industries Ltd (No 2) [1982] 1 All ER 354 ***(refd)***
Re Bellador Silk Ltd [1965] 1 All ER 667 ***(refd)***
Re Bright Pine Mitts Pty Ltd [1969] VR 1002 ***(refd)***
Re City Meat Co Pry Ltd [1983] 8 ACLR 673 ***(refd)***
Re Coliseum Stand Car Service Ltd; Abdul Khalik v. Mohamed Jee & Ors [1985] 1 LNS 164 HC ***(refd)***
Re Gee Hoe Chan Trading Co Pte Ltd [1992] 1 CLJ 268; [1992] 4 CLJ (Rep) 383 HC ***(refd)***
Re HR Harmer [1958] 3 All ER 689 ***(refd)***
Re Jeremyn Street Turkish Baths Ltd [1970] 1 WLR 1042 ***(refd)***
Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung [1978] 1 LNS 170 PC ***(refd)***
Re Kumagai-Zenecon Construction Pte Ltd [1995] 2 SLR 297 ***(refd)***
Re RA Noble & Sons (clothing) Ltd [1983] BCLC 273 ***(refd)***
Re Ringtower Holding Plc [1989] 5 BCC 82 ***(refd)***
Re Senson Auto Supplies Sdn Bhd [1987] 1 LNS 110 HC ***(refd)***
Scottish Co-operative Wholesale Society Ltd v. Meyer [1958] 3 All ER 66 ***(refd)***
Tay Bok Choon v. Tahansan Sdn Bhd [1987] 1 CLJ 441; [1987] CLJ (Rep) 24 PC ***(refd)***
Yai Yen Hon & Ors v. Lim Mong Sam [1997] 2 CLJ 812 CA ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 167(4), 181(a)
Contracts Act 1950, s. 83

For the petitioner - George Lo (James Lo & Ting Cheng Ching with him); M/s George Lo & Partners
For the 1st, 5th, 6th, 8th & 9th respondents - Willian Yeo; M/s JM Lim & Co
For the 2nd, 3rd, 4th & 7th respondents - Sim Hui Chuang (Lim Lip Sze with him); M/s Reddi & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Hamid Sultan Abu Backer JC:

[1] This is my judgment in respect of the petitioner's petition pursuant to s. 181 of Companies Act 1965 (CA 1965), *inter alia*, seeking the following reliefs namely:

(a) a declaration that the petitioner is entitled to be a director of the 9th respondent as long as the petitioner shall hold shares in the 9th respondent. (b) an order that the 1st to 7th and 9th respondents shall reinstate the petitioner as managing director of the 9th respondent at a monthly salary of RM17,000, effective from August 2003. (c) an order that the 1st respondent shall cease forthwith to be the managing director of the 9th respondent. (d) an injunction to restrain the 1st respondent from acting as managing director of the 9th respondent. (e) an order that the board of directors of the 9th respondent shall take all steps necessary to reinstate the petitioner as a compulsory bank signatory to all the 9th respondent's banking accounts so long as he shall be a director of the 9th respondent. (f) an order that the 9th respondent shall forthwith pay to the petitioner all declared dividends due by the 9th respondent to the petitioner. (g) an order that the 9th respondent shall pay all future dividends to its shareholders within 60 days of the date of declaration. (h) an injunction be granted to restrain the 1st to 7th and 9th respondents by themselves and their servants or agents from denying the petitioner and his servants or agents from denying the petitioner and his servants or agents or his invitees access to the premises (both office and factory) of the 9th respondent. (i) an injunction to restrain the 1st and 7th respondents, by themselves or any proxies, corporate representatives or attorneys acting on their behalf, from

exercising their votes at any general meeting of the company to remove the petitioner as director of the 9th respondent. (j) an order that the 1st and 8th respondents shall account to the 9th respondent for all profits made by the 8th respondent from all its dealings with the 9th respondent. (k) damages against the 1st to 7th and 8th respondents. (l) in the alternative, an order that the 1st to 7th respondents shall purchase the shares of the petitioner in the company at a consideration based on the valuation of the shares of the company by a reputable firm of public accountants based in Kuala Lumpur, within 90 days from completion of the valuation. (m) that the shares of the company be valued at the date of this petition (22 August 2006) and the costs of such valuation be borne by the 1st and 7th respondents.

[2] There are 2 firms of solicitors representing the respondents. 1st, 5th, 6th, 8th and 9th respondents (hereinafter referred to as Malaysian Group) are represented by one firm of solicitors and 2nd to 4th and 7th respondents (hereinafter referred to as Japanese Group) are represented by the other firm of solicitors.

[3] I have also on this day delivered a judgment on the petitioner's petition to wind up Sanyan Holdings Sdn. Bhd on just and equitable ground. I find many of the allegations in this petition are repetitions from the previous petition. Some of my observations in that judgment will equally apply here even though I have not set them out herein.

[4] The petitioner in the petition, *inter alia*, says (i) the petitioner and the 1st respondent are founding subscriber and director of the 9th respondent. (ii) the 2nd to 4th respondents are nominees of the 7th respondent. The 5th respondent is the eldest son of the 1st respondent. The 6th respondent is the nominee of the 1st respondent. The 7th respondent is a shareholder of the 9th respondent. The 8th respondent is a company owned and controlled by the 1st respondent. The petitioner and the 1st to 6th respondents sit in the board of directors of the 9th respondent. (iii) the object and purpose for the incorporation of the 9th respondent was to undertake a joint venture business with the Malaysian Group and the Japanese Group.

[5] Under the caption of 'Historical Background' the petitioner says: (i) the petitioner had come to know the 1st respondent and his brother the late Datuk Mohammed Arip (deceased) as early as 1970 when working in Ding Brothers Sdn. Bhd. (ii) the petitioner and the 1st respondent has set up a number of joint ventures business for the last 25 years. The petitioner alleges that the joint venture businesses were of quasi-partnership business in nature and based on mutual trust, confidence and the reciprocal duties to act with utmost good faith to each other. (This is an issue which is seriously denied by the 1st respondent, and a focal point of challenge). The joint venture business of the petitioner and the 1st respondent includes a number of companies namely: (i) Binta Corporation Sdn Bhd (ii) Marine Utama Sdn Bhd (iii) Sanyan Sdn Bhd (iv) Sanyan Lumber Sdn Bhd (v) Pembangunan Hasil Baik Sdn Bhd (vi) Mansang Holdings Sdn Bhd (vii) Sanyan Development Sdn Bhd (viii) Sanyan Sawmill Sdn Bhd (ix) Sarachi Services Sdn Bhd (x) Goodmatch Sdn Bhd (xi) Sanyan Wood Industries Sdn Bhd (xii) Sanyan Holdings Sdn Bhd (xiii) Sanyan-Soon Hup Sdn Bhd. The joint venture companies consist of other shareholders and directors holding different equities, and the companies are commonly referred to as "the Sanyan Group of Companies". The petitioner alleges that the petitioner was the one who was responsible for initiating the investment and took charge of the business operation. Until 2003, the 1st respondent was not involved in the active management of the 9th respondent and other companies in the Sanyan Group. (Here, the petitioner does not disclose why the 1st respondent became involved. The 1st respondent and the Japanese Group say that the petitioner voluntarily resigned as a managing director as he was elected as State Assemblyman and wanted to concentrate on politics).

[6] Under the caption of "joint venture", the petitioner says: (i) a joint venture agreement was initiated with the Japanese Group with one of the companies of the Sanyan Group of companies known as Goodmatch Sdn Bhd. Under the joint venture agreement, the Sanyan Group will hold 51% equity and the Japanese Group will hold 49% equity. For the purpose of operating the joint venture, the 9th respondent was incorporated. The petitioner alleges that the joint venture was a quasi-partnership between the Japanese shareholders and the local shareholders, comprising of the petitioner and the 1st respondent. The business of the 9th respondent has been successful from

inception and the shareholders were paid handsome dividends annually. The details of the shareholding of the 9th respondent are as follows:

Shareholders	No. of Shares	Percentage
a. Datuk Haji Mohammad Tufail bin Mahmud	4,200,000	21.00%
b. Dato' Ting Check Sii	4,000,000	20.00%
c. Dayang Siti Aminah bte Abang Bolhassan	150,000	0.75%
d. Hajjah Hapipah bte Hj Mohd Kaka	122,000	0.61%
e. Masjidah bte Mohamad Fauzi	100,000	0.50%
f. Tinya ak Ajang	75,000	0.375%
g. Dayang Hadijah bte Awang Kadir	75,000	0.375%
h. Morshidi bin Omar @ Draman bin Omar	78,000	0.39%
i. Hanifah Hajar Taib	1,000,000	5.00%
j. Goodmatch Sdn Bhd	400,000	2.00%
k. Ishinomaki Plywood Manufacturing Co Ltd	9,800,000	49.00%

[7] Under the caption "Act of Oppression", the petitioner says: (i) in 2002 the petitioner attended the graduation ceremony of the 1st respondent's daughter, Anita Hamidah Tufail in San Francisco, and then the 1st respondent informed the petitioner that he would like to bring his graduate daughter, Anita into Sanyan Group, as she has many new ideas for the Group. The petitioner did not object. Thereafter relationship between the petitioner and the 1st respondent deteriorated. After early 2003, the 1st respondent refused to meet with the petitioner and started to take control of the Group and either ignore or override the petitioner's instruction. (ii) on 25 July 2003, the Japanese directors informed that they had been requested by the 1st respondent to support his appointment as managing director and that they intend to support the 1st respondent to protect their foreign investment in

Sarawak as the 1st respondent is an influential man in Sarawak. Later on the day the petitioner was forced to resign as managing director under the threat of the 1st respondent that he will suffer the humiliation of being removed if he did not do so voluntarily. The 1st respondent assured that the petitioner would be appointed as deputy executive chairman if he relinquished his post. The 1st respondent became the chairman and executive director, after which the 9th respondent did not pay the petitioner's managing director's salary of RM17,000 per month. On 18 November 2003, the petitioner was also removed as a bank signatory. Since early 2003, about eight long time senior management staffs of Sanyan Group who were perceived to be appointees of the petitioner were either dismissed or pressured into resigning. These staffs were publicly humiliated by full page advertisements in the newspapers framed to look like obituary notices. (iii) in the middle of 2004, dividends were paid by the respondent in full to other shareholders in April and June except the petitioner. The petitioner's dividend of RM1,600,000 was paid in two installments, one in July and the other in 2004. (iv) on the 12th annual general meeting (AGM) of the 9th respondent held on 26 April 2004, the shareholders refused to re-elect the petitioner's son as director whilst the 1st respondent's son, the 5th respondent was re-elected. (v) the minutes of the AGM were only forwarded after more than a year under cover of a letter dated 27 September 2004, together with the minutes of the AGM held on 26 April 2004. The minutes contained a number of untrue statements. When the petitioner pointed out the discrepancies by letter, the 1st and 2nd respondents wrote a letter dated 5 February 2005 alleging that the petitioner (a) had been uncooperative in rendering accounts despite being requested to do so; (b) had been negligent and in breach of fiduciary duties in failing to act in the best interest of the company and its members; (c) had exercised his powers as managing director for improper and personal purposes; (d) staff under the petitioner's management had been instructed to engage in activities to promote the petitioner's political activities; (e) has failed to act with care, skill and diligence in the performance of his duties as managing director, and (f) has acted in breach of his duties as managing director. (vi) However, the 1st and 2nd respondents had refused to furnish particulars and instances of the allegations. Further, the petitioner was not allowed to inspect the accounts during reasonable working hours and in consequence, the petitioner filed

an action in Sibu High Court for inspection of accounts. Besides, despite a negotiated agreement the 9th respondent had failed and neglected to give such access to the petitioner. (vii) the petitioner who is supposed to be the deputy executive chairman is now only a director, completely ousted from the management of the 9th respondent and is kept in the dark as to the affairs of the 9th respondent in which the petitioner has a legitimate expectation to participate in the management as managing director. (viii) the petitioner has just discovered that the 1st respondent has made secret profits at the expense of the 9th respondent, through the 8th respondent a company owned by the 1st respondent. Particulars are as follows:

2003	The Company paid Hamidah Trading for purported log purchases about	...	RM41 million
2004	The Company paid Hamidah Trading for purported log purchases about	...	RM80 million
2005	The Company paid Hamidah Trading for purported log purchases – January about	...	RM 2.5 million
	Trading "commission" or "handing fees" for – February to December	...	RM 2.6 million

(ix) the 1st to 6th respondents are in breach of their fiduciary duties owed to the 9th respondent as directors of the 9th respondent and their breach has unlawfully and unjustly enriched the 1st respondent. (x) by a notice of board meeting of Pelita Towerview Sdn. Bhd., the 1st respondent proposed a resolution to deprive the petitioner of his personal office on Level 27 Wisma Sanyan and to convert it to a board room. The petitioner has to obtain an *ex parte* injunction in Sibu High Court from restraining Pelita Towerview Sdn. Bhd. from doing so. The *ex parte* order was subsequently replaced by an interlocutory injunction granted by consent of the parties. The attempt by the 1st respondent is

part of a series of acts taken to oust the petitioner from the management of the Sanyan Group which includes the 9th respondent. Even though the petitioner has been retained as a director on the board of the 9th respondent company, the petitioner has been wrongfully excluded from any participation in the management and affairs of the 9th respondent company. There was an understanding between the 1st respondent and the petitioner, evidenced by conduct, since the start of their first joint venture business and over the past 25 odd years, that the petitioner would be the managing director of the companies within the Sanyan Group in charge of the daily management and operations of the Group. In breach of this fundamental understanding, the 1st respondent has wrongfully ousted the petitioner as managing director and excluded the petitioner from his control of the daily management and operations of the 9th respondent company. In doing so, the 1st respondent was aided and abetted by the 2nd to 6th and 7th respondents. The conduct of the 1st to 6th and 7th respondents show: (i) a lack of probity and fair dealing in the affairs of the company to the prejudice of the petitioner. (ii) a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect. For the reasons aforesaid, the petitioner says: (i) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to him or in disregard of his interests as a member of the company; and/or (ii) that some act of the company has been done or threatened or some resolution of the members has been passed which unfairly discriminates against or is otherwise prejudicial to him as a member of the company.

[8] In opposing the petition, the Malaysian Group, *inter alia*, submits that the petition ought to be dismissed on the grounds that: (a) the 9th respondent company is not a quasi-partnership. (b) there are no legitimate expectations or understanding between the petitioners with any of the parties to support the allegation that the petitioner was to always be the managing director of the 9th respondent company. (c) the petitioner has not come to this court with clean hands. (d) the petition is for ulterior motives. (e) there has been an inordinate delay. (f) there is no reason why this court ought to force or order the respondent shareholders to buy out the petitioner and winding up is not an appropriate remedy here. (g) the petitioner has failed to prove that the affairs of the

9th respondent company has been concluded in a manner which is oppressive, in disregard of his interests, is unfairly discriminatory or prejudicial to the petitioner to warrant the granting of any of the prayers in the petition. (h) the petitioner's arguments that he is entitled to be managing director and has been excluded in the management of the company and it is quasi partnership is misconceived. (i) the petitioner has come with unclean hands and unreasonable conduct. After voluntarily relinquishing the position of managing director, the petitioner had a change of mind. This is manifestly shown in prayers (a) and (b) of the petition wherein the petitioner has prayed for his reinstatement as managing director of the 9th respondent company. The petitioner has acted in an unreasonable and disruptive manner, contrary to the interests of the 9th respondent company. The petitioner refused to participate or co-operate in management, made baseless allegations and gave excuses not to come to the offices of the 9th respondent company. The petitioner, after refusing to co-operate with the management and acting deliberately to frustrate the management of the 9th respondent company, cannot now complain that he had been excluded from management merely because he wants to get back into management as managing director. (j) there has been inordinate delay. Much of the matters complained of by the petitioner relate to matters occurring from or about mid-2003. (k) buying out the shares of the petitioner or winding up of the 9th respondent is not appropriate remedy. There is no reason why this court ought to order the 9th respondent company to be wound up or force the shareholders to buy out the petitioner just because they do not like each other. Following the reasoning of the Court of Appeal's decision in *Hoy Pak Kwai v. Leong Kon Fah & Ors* [2007] 1 CLJ 121: (a) the 9th respondent company is a highly profitable and lucrative company as may be seen in its audited accounts. There is no indication that this state of affairs will not continue nor has the petitioner made any allegations to that effect. To the contrary, the petitioner himself acknowledges the commercial success of the 9th respondent. (b) even if there has been a loss of confidence and trust between the petitioner and the respondents, the substratum of the 9th respondent company is still intact and the 9th respondent company is well managed even without the petitioner as managing director. There was no oppression to remove the petitioner as managing director. He voluntarily resigned. Further, the petitioner cannot expect the fees of RM17,000 given to him when he was a managing director

A after he has resigned. The removal of bank signatory cannot be treated as oppression as the respondent complains that the petitioner was not co-operative. There is no entitlement or requirement to elect the petitioner's son as a director. Secondly, the petitioner has conveniently omitted to note that it is apparent
B from the attendance lists of all board meetings that Mr. Ting Sing Dean never attended a single meeting. There is no oppression in payment of dividends as some shareholders had requested for earlier payment for good reasons, as set out in the affidavit. The dividends were actually paid. Not discharging the petitioner as a
C guarantor in this case cannot amount to oppression as he is still a director. Untrue statements in the minutes, if they be true, are subject to correction in the next meeting and this cannot be a basis to allege as oppressive act.

D **[9]** The Japanese Group in opposing the petition, *inter alia*, submits as follows: (a) the 9th respondent is not a quasi-partnership as stated in *Ebrahimi v. Westbourne Galleries Ltd. & Ors* [1973] AC 360. (b) there has been laches and inordinate delay. (c) the petitioner has filed the petition with ulterior motives and
E collateral purposes. (d) the allegation of "Historical Background" in paras 12 to 19 of the petition are matters between the 1st respondent and the petitioner and the Japanese Group are not privy to those matters. (e) the allegations of oppression has no merits, as the acts of oppression allegedly complained of must
F affect the petitioner as a shareholder in respect of his interests as a member or shareholder or quasi shareholder. (f) petitioner was not ousted from management. He remains as a director. The petitioner relinquished his position as a managing director and supported the 1st respondent to be elected as the managing
G director. The relevant minutes of meeting of the board of directors held on 25 July 2003 show that the petitioner wanted to dedicate more time to politics and related commitments. The same minutes also recorded that the petitioner "sought the board support for the new managing director and to further strengthen the company"
H and "the board unanimously resolved to appoint Dato' Haji Mohamed Tufail bin Mahmud as executive chairman cum managing director …". The petitioner cannot now complain and challenge the very decision of the board of directors in which he himself took part. (g) as the petitioner had resigned as a managing director
I he cannot be paid the managing director's salary of RM17,000. (h) the petitioner's removal as a signatory to bank cheque is a managerial decision of the board of directors and the petitioner has

no legal right or entitlement to be a compulsory signatory. (i) the 8 long time staff whom the petitioner complained was dismissed has nothing to do with the 9th respondent. (j) there was no refusal to pay dividends. The 7th respondent had requested for earlier payment of dividend for the purpose of reconciliation and consolidation of accounts with its holding company in Japan. The board agreed and the payment was made. (k) although the petitioner disputes Goodmatch's claim, it was felt prudent that the disputes between the petitioner and Goodmatch should be resolved between themselves first before the 9th respondent makes payment. (l) the petitioner implies that he has a personal liability of 35 million ringgit as a guarantor. The petitioner is still a director of the company and he has not asked to be removed as a guarantor. Section 83 of the Contracts Act 1950 states that a continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditor. (m) evidence will show that the petitioner's son never attended any of the board meetings and in consequence, he was not re-elected. (n) minutes of meeting are subject to corrections. The allegedly untrue statements can be corrected in subsequent meetings. The petitioner has access to minutes of meeting and is entitled to attend all meetings where minutes are confirmed or corrected. Only long after the minutes had been confirmed did the petitioner make false allegations about the minutes and alleged that the minutes contained untrue statement. In any event, these are not matters of oppression within s. 181. (o) the issue of inspection of accounts is a right of director and not a shareholder, as stated in s. 167(4) of CA 1965. Section 181 relates to interests of members and shareholders and not rights of directors. The petitioner has ventilated his grievance through the proceedings in Sibu, High Court. (p) the allegation that the 1st to 7th respondents were in breach of fiduciary duty in the purported allegation of secret profits made by the 1st respondent through the 8th respondent is not true. As early as 2003, when the petitioner was the managing director, the 9th respondent was trading with the 8th respondent. Payments made by the 9th respondent in 2003, 2004 as well as 2005 are not profits of the 8th respondent but are the purchase price of logs supplied to the 9th respondent. The trading commission or handling fees paid to the 8th respondent are for services rendered. Such trading commission or handling fees are common in the industry. (q) the allegations relating to Pelita Towerview Sdn Bhd do not concern the 9th respondent.

[10] It is trite that s. 181 of the CA 1965 gives the court wide powers to remedy oppression and in the alternative to order winding up of the company. Though the discretion of the court is very wide as a matter of policy, the court has to exercise its discretion with utmost care and wisdom, failing which it will stand as a precedent for any person unhappy with the management of the company to file frivolous petition to frustrate the business of the company and thereby cause loss and damage to the company. The court will rarely want to substitute the managerial decision of the company for every difference in opinion of shareholders on the ground that the said decision is oppressive. When exercising the discretion the court must consider *inter alia* (i) the need to respect the majority decision of the members to manage the affairs of the company within the rights conferred under the law to be read with the Memorandum and Articles of Association of the Company. (ii) the need to protect the minority from any oppressive conduct which does not subscribe to the concept of corporate accountability and transparency. (iii) to provide only the minimum remedy justifiable to the actual needs of the occasion unless otherwise warrants to ensure the productivity of the company towards social and economic growth are not hampered. (iv) not to provide the remedy if the relief sought is not appropriate or the conduct of the petitioner will disqualify the petitioner from proceeding against the company.

[11] A member of the company will be able to bring himself within the section if he can show that the value of his shareholding in the company has been seriously diminished or at least seriously jeopardised by reason of a course of conduct on the part of those persons who have *de facto* control of the company, which has been unfair to the member concern. The test is objective, ie, whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner's interests. (*Re R.A. Noble & Sons (clothing) Ltd* [1983] BCLC 273; *Re Ringtower Holding Plc* [1989] 5 BCC 82).

[12] The change in the appointment of managing director or directors of the company done according to law and articles of association and/or shareholders agreement cannot be a subject matter of challenge under this provision. *In re Jeremyn Street Turkish Baths Ltd* [1970] 1 WLR 1042 (CA,) Buckley J observed:

> In our judgment, oppression occurs when shareholders, having a dominant power in a company, either (1) exercise that power to procure that something is done or not done in the conduct of the company's affairs or (2) procure by an express or implicit threat of an exercise of that power that something is not done in the conduct of the company's affairs; and when such conduct is unfair or, to use the expression adopted by Viscount Simonds in *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] AC 324, 342 "burdensome, harsh and wrongful" to the other members of the company or some of them, and lacks that degree of probity which they are entitled to expect in the conduct of the company's affairs: see *Scottish Co-operative Wholesale Society Ltd. v. Meyer* and *In re H. R. Harmer Ltd.* [1959] 1 WLR 62. We do not say that this is necessarily a comprehensive definition of the meaning of the word "oppressive" in section 210, for the affairs of life are so diverse that it is dangerous to attempt a universal definition. We think, however, that it may serve as a sufficient definition for the present purpose. Oppression must, we think, import that the oppressed are being constrained to submit to something which is unfair to them as the result of some overbearing, act or attitude on the part of the oppressor. If a director of a company were to draw remuneration to which he was not legally entitled or in excess of the remuneration to which he was legally entitled, this might no doubt found misfeasance proceedings or proceedings for some other kind of relief, but it would not of itself amount to oppression. Nor would the fact that the director was a majority shareholder in the company make any difference, unless he had used his majority voting powers to procure or retain the remuneration or to stifle proceedings by the company or other shareholders in relation to it.

In *Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung* [1978] 1 LNS 170, Lord Wilberforce opined:

> Secondly, for the case to be brought within section 181(1)(a) at all, the complaint must identify and prove "oppression" or "disregard". The mere fact that one or more of those managing the company possess a majority of the voting power and, in reliance upon that power, make policy or executive decisions, with which the complainant does not agree, is not enough. Those who take interests in companies limited by shares have to accept majority rule. It is only when majority rule passes over into rule oppressive of the minority, or in disregard of their interests, that the section can be invoked. As was said in a decision upon the United Kingdom section there must be a visible departure from

A the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect before a case of oppression can be made (*Elder v. Elder & Watson Ltd* [1952] SC 49): their Lordships would place the emphasis on "visible". And similarly "disregard" involves something more than a failure
B to take account of the minority's interest: there must be awareness of that interest and an evident decision to override it or brush it aside or to set at naught the proper company procedure (per Lord Clyde in *Thompson v. Drysdale* [1925] SC 311, 315). Neither "oppression" nor "disregard" need be shown by a use of the majority's voting power to vote down the
C minority: either may be demonstrated by a course of conduct which in some identifiable respect, or at an identifiable point in time, can be held to have crossed the line.

[13] Section 181 relief is not relevant in cases where there is
D disagreement to managerial decisions or policy decisions. Such conduct does not necessarily constitute oppression or disregard of a member's interests. Section 181 remedy is only applicable to case where the oppressive conduct affects the petitioning member qua member. The oppression complained of must be continuing at
E the time the action is brought. The relief should be sought expeditiously. In *Re Senson Auto Supplies Sdn Bhd* [1987] 1 LNS 110, Edgar Joseph Jr. (as he then was) opined:

> First, I regard with considerable skepticism the *bona fides* of the petitioners in presenting this petition in order to obtain relief from
F alleged oppression, having regard to the alternative prayer in it for "rescission of all those shares allotted to the petitioners on April 30, 1986, and repayment of $ 25,381 paid therefore." There is authority for saying that even if the directors or majority shareholders have been guilty of improper or unreasonable conduct
G so that there appears to be a *prima facie* case for relief, it will be refused if the real purpose of the petitioners is to obtain payment of money owed by the Company (see *Re Bellador Silk Ltd* [1965] 1 All ER 667).
>
> Secondly, I noted that the major matters complained about by the
H petitioners appear to have been spread out over a considerable period of time. It is settled law that delay by petitioners in initiating proceedings after they have realised that they have been victims of a scheme of oppression will induce the court to refuse relief, since this indicates that they have acquiesced in the conduct complained about and their complaints are not therefore made in
I good faith (see *Re Jermyn Street Turkish Baths Ltd* [1971] 3 All ER 184).

[14] The burden of proof is upon the petitioner, who must prove his allegations by direct evidence or by reasonable inference to be drawn from the documents. The *sine qua non* to proof is that the petitioner must satisfy the court the act complained of if true amounts to oppression.

[15] Learned author Walter Woon On Company Law has catalogued different instances of oppression under which the court has granted relief. They are as follows: (i) dominant members advancing their own interests. (ii) disregard of minority's rights and interests. (iii) abuse of voting powers. (iv) expropriation of members property. (v) exclusion from management. (vi) management deadlock. (vii) autocracy in family company. (viii) breakdown in relationship between corporators. (ix) depriving the minority of information.

[16] There can be a legitimate expectation to be a director but not managing director. For the position of a managing director is one in the interest of the company to be given to the person who can manage and administer it to the satisfaction of the board of directors as well as the majority shareholders. There is no case authority to support the proposition that there can be a legitimate expectation to be a managing director until a person's natural death when the articles of association are silent. Learned author Walter Woon has set out the practical heads of legitimate expectation as follows: (i) it is a legitimate expectation on the part of members of a company that the company should be run in the interest of all the members and not only of the majority. (See *Re HR Harmer* [1958] 3 All ER 689; *Re Coliseum Stand Car Service Ltd; Abdul Khalik v. Mohamed Jee & Ors* [1985] 1 LNS 164; *Re City Meat Co Pte. Ltd* [1983] 8 ACLR 673). (ii) it is a justifiable conviction of members of a company that they should receive a fair share of the profits of the business. (See *Re: Gee Hoe Chan Trading Co Pte Ltd* [1992] 1 CLJ 268; [1992] 4 CLJ (Rep) 383). (iii) it is also a rightful assumption of a member of a company that the directors will act honestly and diligently. (See *Jenkins v. Enterprise Gold Mines NL* [1991] 6 ACR 539). (iv) in the case of an incorporated partnership or a family business, it may be a reasonable expectation of minority shareholders that they (or their faction) should have board representation to safeguard their interests. (See *Ebrahimi v. Westbourne Galleries Ltd* [1973] AC 360 (House of Lords); *Tay Bok Choon v. Tahansan Sdn Bhd* [1987] 1 CLJ 441; [1987] CLJ (Rep) 24 (Privy Council on appeal from

Malaysia); *Re Gee Hoe Chan Trading Co Pte Ltd* [1992] 1 CLJ 268; [1992] 4 CLJ (Rep) 383). (v) it is a genuine requirement of a member that directors will account to the members for their stewardship of the company. (See *Caparo, Industries plc v. Dickman166* [1990]1 All ER 568, 583). (vi) the member of a joint venture company trusts that the majority shareholder will not run the company as if it was his own business, disregarding the interests of his partner. (See *Re Kumagai-Zenecon Construction Pte Ltd* [1995] 2 SLR 297). (vii) in the case of a guarantee company, it is also a valid assumption that natural justice will be observed where expulsion of a member is concerned. (See *Peck Constance Emily v Calvary Charismatic Centre Ltd* [1991] 3 CLJ 2997; [1991] 4 CLJ (Rep) 1038).

[17] I have read the petition, affidavits and submissions in detail. I do not think this is a fit and proper case to entertain an application under s. 181 of CA 1965. My reasons are as follows:

(a) It is my finding that in this case the petitioner did not show any personal relationship based on mutual confidence with the 7th respondent, a corporate body. Personal relationship based on mutual confidence is a pre-requisite and a fundamental element which needs to be established to succeed in a claim relating to quasi partnership. In *Yai Yen Hon & Ors v. Lim Mong Sam* [1997] 2 CLJ 812, Mokhtar Sidin JCA opined:

> The petitioner did not claim any personal relationship with the corporate shareholders of the company and the Court could not see how a personal relationship could be established with a corporate body. Any personal relationship which existed was only between the individual shareholders and could not therefore give rise to a quasi-partnership to the exclusion of the minority corporate shareholders. The High Court Judge was wrong in holding that where a personal relationship with some of the shareholders of the company exists, the minority shareholders can be ignored …
>
> … We wonder how one individual shareholder can establish a personal relationship of quasi partnership with a corporate shareholder …

(b) There was no credible evidence or contemporary documents to show that there was collateral agreement or understanding that the petitioner can be the managing director and can always be involved in the management and control of the 9th

respondent, notwithstanding that he is only a minority shareholder. In *Eng Man Hin & Anor v. King's Confectionery Sdn Bhd* [2005] 8 CLJ 77, Ramly J opined:

> It is to be noted that the petitioners, in the present case alleged "an intention" in para. 6 of the petition. The petitioners had failed to aver that there is an agreement or understanding between the parties with regards to the alleged sharing of management control of the 1st respondent. The petitioners have not shown by whom and how the agreement or understanding was made with each of the 2nd-5th respondents. Since to restrain each of the 2nd-5th respondents, it is incumbent on the petitioners to show that each of them has made such an agreement with the petitioners. In the absence of such an agreement, it would be unfair to restrain any of the 2nd-5th respondents, who did not enter into such an agreement or undertaking with the petitioners. Without such an agreement, the question of "breach" does not arise at all. In the circumstances, an unilateral intention unannounced by the petitioner is not sufficient. The petitioner must prove the existence of such an alleged underlying understanding is common to all shareholders, (see: *Re Ringtower Holdings Plc* [1989] 5 BCC 82; *Tuan Ishak Ismail v. Leong Hup Holdings Berhad & Other Appeals* [1996] 1 CLJ 393; *Re Blue Arron Plc* [1987] BCLC 585). It must be shown that the understandings or intentions are common to all the shareholders and is not the result of a private bargain between one but not all the shareholders, (see also: *Loh Siew Cheang v. Corporte Powers, Controls, Remedies and Decision-Making* [1996] MLJ 152).
>
> The petitioners have failed to provide any credible evidence as to the parties, dates, venue and form of the agreement or understanding that they are alleging that they will be entitled to share equally the management control between the petitioners on one part and the 2nd-5th respondents on the other part on a 50:50 basis.
>
> There is no reference to any collateral agreement or understanding for the alleged sharing of management control in the 1st directors meeting held on 20 August 1993, immediately after the 1st respondent was incorporated. The said meeting adopted the Memorandum and Articles of Association without qualification. There is also no provision in the Articles of Association referring to the alleged sharing of management control. Such an agreement or understanding must be incorporated in the form of a separate collateral agreement

between all the shareholders or alternatively, must be provided for in the Articles of Association. This has been stressed by Lord Wilberforce in *Ebrahimi*'s case as follows:

> If it is so defined by the articles or for example, by the articles supplemented by a shareholders' agreement, then there is little room for finding further legitimate expectations beyond those outlined in the documents.

The importance of the Memorandum and Articles of Association have been emphasized by the Court of Appeal in *Tuan Ishak Ismail*'s case and *Fairview Schools Bhd. v. Indrani Rajaratnam & Ors* [1998] 1 CLJ 285 CA. In *Tuan Ishak Ismail*'s case, Mahadev Shankar JCA held at p. 421, that:

> ... if they regarded these matters as important, we think it was imperative not only that agreements on such matters should have been put into writing but also the articles of association should have been amended so as to substantiate the claim that is being made.

The provisions of the memorandum and articles of association constitute the statutory contract between the members or shareholders of a company and must be given due regard. The petitioner cannot ignore it on a vague, unparticularised and unsubstantiated allegation of a legitimate expectation, (see: *Dato' Low Mong Hua v. Banting Hock Hin Estate Co. Sdn. Bhd. & 8 Ors* [2003] 1 LNS 387; [2003] 6 AMR 245). A claim for legitimate expectation to management said to exist outside the Articles of Association is unlikely to succeed. (see *Beh Chun Chuan v. Paloh Medical Centre Sdn. Bhd. & Ors* [1999] 7 CLJ 1; [1999] 7 CLJ 1). A company is an association of persons for economic purpose, usually entered into with legal advice and some degree of formality. The terms of the associations are contained in the articles of association and sometime in collateral agreements between the shareholder. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed, (per Lord Hoffman in *O'Neill*'s case).

There is no reference of the alleged sharing of management control or any evidence of a collateral agreement or understanding in the minutes of the board meeting held on 15 December 1993 on the approval by the directors to takeover the business of the 1st King's Confectionery and 2nd King's Confectionery.

> There is also no reference to the alleged sharing of management control in the minutes of 13 July 2005 board meeting when the proposals for the appointment of additional directors were not approved or when the petitioners sons' appointment as associate directors were cancelled. It would be normal in the ordinary course of human nature for the petitioners to have referred to this collateral agreement if this existed, during the discussions. This omission shows that the allegation is an afterthought …

(c) From the evidence adduced and from the contemporary documents, the conduct of the respondents have been fair and reasonable to the minority shareholders as a whole and the 9th respondent has been run within its constitutional framework; and the law and the management decision as the respondents say, according to sound corporate and commercial reasons. On the other hand, the action and decision of the petitioner after having resigned as managing director and creating disharmony in the economic activities of the company, notwithstanding that there is no allegation by him that his profits as shareholder has been affected, does not strengthen the *bona fide* of his claim. The respondent's allegation that the petitioner does not come with clean hands and conduct is unreasonable, has merits. In *Hoy Pak Kwai v. Leong Kon Fah & Ors (supra)*, James Foong JCA on the facts of the case opined:

> I accept this as a logical explanation and I find that there was nothing sinister about this move by the 1st and 2nd respondents, it was just a marketing strategy and policy adopted by API …
>
> … As to the appellant's claim of there being a breach of fiduciary duty, I find this absurd. As correctly pointed out by the trial judge, the 1st and 2nd respondents are substantial shareholders and directors of API. They owe no fiduciary duty to the appellant in exercising their vote at board meetings and as shareholders they owe no duty to anybody as to how they exercise their vote …
>
> … These loathsome activities had disrupted the smooth running of the company and instead of concentrating on maintaining profitability and improving productivity, the energy of the directors was diverted to entertaining internal squabbles caused by the appellant … When this is a fact, then the appellant cannot now turn around and blame the 1st and 2nd respondents …

A

> … Under these circumstances there is no justifiable reason why the court in exercising its judicial discretion, based on just and equitable rule, should accede to the demands of the appellant particularly when there is cogent evidence that he did not come with clean hands …

B

(d) I also find that the conduct of the petitioner is unreasonable to insist that he hold the position of the managing director when there is evidence to show that he resigned and supported the appointment of the 1st respondent to be the managing director. In *Loh Eng Leong & Ors v. Lo Mu Sen & Sons Sdn. Bhd. & Ors* [2000] 8 CLJ 338, Zulkefli bin Ahmad Makinudin J (as he then was) opined:

C

> ... It is also my finding that even if the petitioners claimed that they had a legitimate expectation the manner that its should be managed as earlier intended when it was first incorporated, they stand to lose that equity if they abandon the task entrusted to them. In such a case, they cannot subsequently complain that they have been excluded from management merely because they wanted to get back into management …

D

E

(e) In *Re Bellador Silk Ltd* [1965] 1 All ER 667, Plowman J opined:

> ... A petition which is launched not with the genuine object of obtaining the relief claimed, but with the object of exerting pressure in order to achieve a collateral purpose is, in my judgment, an abuse of process of court ...

F

(f) The allegations of the petitioner are stale as it originates from 2003, and in any event there is an inordinate delay even to pursue the petitioner's grievance. In *Loh Eng Leong & Ors (supra)* Zulkefli bin Ahmad Makinudin J (as he then was) opined:

G

> ... It is also my finding that there has been an inordinate delay by the petitioners in filing this petition and added to that fact it can safely be said that the petitioners had acquiesced to all acts and decision taken by the Board of Directors of the first respondent in relation to all the matters which they had now raised and alleged against the respondents ...

H

I

> ... In the case of *Re Senson Auto Supplies Sdn Bhd* [1987] 1 LNS 110, his Lordship Edgar Joseph Jr J (as he then was) in his judgment on this point, *inter alia*, states that it is settled law that delay by petitioners in initiating proceedings after they have realised that they have been victims of a scheme of oppression will induce the court to refuse relief, since this indicates that they have acquiesced in the conduct complained about and their complaints are not therefore made in good faith …

(g) I do not think that an order to force the shareholders to buy out the petitioner's shares or to wind up the 9th respondent purely on the basis there is misunderstanding between the parties is appropriate under s. 181 remedy, more so when the 9th respondent is making profits, under a good management which in principle subscribe to corporate transparency and accountability. In *Hoy Pak Kwai (supra)*, James Foong JCA opined:

> ... Though I believe that the appellant has lost confidence with the 1st and 2nd respondents and *vice versa* I am of the opinion that the substratum of the company is still intact. The company continues to operate as an entity separate and distinct from its shareholders. As an ongoing profitable enterprise there is no reason why the court should order it to be wound-up or force one shareholder to buy out the other just because one does not like the other. Without the appellant as a director. API is, relatively speaking, well managed and this is manifested by the rather substantial dividends dished out from time to time to shareholders for their investments. Under these circumstances there is no justifiable reason why the court in exercising its judicial discretion, based on just and equitable rule, there is cogent evidence that he did not come with clean hands ...

(h) The right to be a signatory to cheque is a managerial decision. From the evidence there are allegations to show that the petitioner after having entered into politics has not been cooperating with the administrative affairs of the 9th respondent. In *Eng Man Hin & Anor v. King's Confectionery Sdn Bhd* [2005] 8 CLJ 77, Ramly Ali J opined:

> The petitioners complained that they had been removed as bank signatories. The court is of the view that this complaint is without merit. It was caused by the petitioners' own conduct in refusing to sign cheques to pay for the

A trademarks suit undertaken by the 1st respondent. The 2nd-5th respondents as majority directors of the company are entitled under the articles of association to change the bank signatories when need be. The 2nd-5th respondents are acting in the interest of the company, to commence the trademarks suit and to make proper payments for that purpose. From the facts of the case, the 2nd-5th respondents were acting properly and in good faith for the best interest of the company. In doing so they have retained the right of the petitioners to sign for cheques exceeding RM100,000. By reason of the above the petitioners are not entitled to ask for the court's just and equitable remedy since they have not come with clean hands being the cause of the problems ...

(i) The removal of staff has nothing to do with the 9th respondent and other ancillary issues do not come within the purview of s. 181 of CA 1965. In *Eng Man Hin & Anor v. King's Confectionery Sdn Bhd (supra)*:

> The petitioners also made various other minor complaints relating to employment of new staff without their approval; removal of company's secretary and mode of conducting business in setting up and operating unprofitable outlets and kiosks. The court finds no real merits on these complaints. They are purely domestic managerial decisions undertaken by the majority of the board of directors in their day-today management of the 1st respondent company, for the best interest of the company's operation and business. There is no element of oppression or other wrongful conducts on the part of the 2nd-5th respondents shown by the petitioners ...

(j) The failure to re-elect the petitioner's son, Mr. Ting Ding Dean who never attended a single meeting as per the allegation of the respondents cannot be said as unjust act by the shareholders or the board of directors, giving rise to a remedy under s. 181 of CA 1965.

(k) The petitioner's allegation that he has not been given access to accounts is not a matter which can be entertained under s. 181 as there are other suitable remedies in law which the petitioner has in fact initiated. In *Eng Man Hin & Anor v. King's Confectionery Sdn Bhd (supra)*, the court stated:

> The petitioners also complained that they were denied access to the company's records by the 2nd-5th respondents. The 2nd-5th respondents have produced evidence to show that there are financial discrepancies within the company. The 2nd respondent had written a letter dated 16 September 2005 to the 1st petitioner for an explanation. The 1st petitioner has refused to provide an answer and instead have made various accusations. The vouchers showing the payments taken by the 1st petitioner had been produced and the correspondence relating to the financial irregularities are also produced. Clearly, the 1st respondent company is entitled to obtain clarification from the 1st petitioner, under such circumstances. The 2nd-5th respondents as directors are justified to take action upon the 1st petitioner's refusal to do so. By reason of the facts stated above, the 2nd-5th respondents are entitled to control the access by the 1st petitioner to the company's information and records.
>
> In any event, with the consent order for the inspection of documents as requested by the petitioners under s. 167 of the Companies Act 1965, there should be no further cause for complaint by the petitioners on this same matter …

(l) The allegations involving Pelita Towerview Sdn. Bhd. has no relevance to this petition. Further, the allegation of secret profits between the 1st respondent and the 8th respondent cannot be entertained in this petition. Section 181 deals with a member's personal right to be treated fairly. The injury must be an injury done to himself and not the 9th respondent. If the injury is to the 9th respondent, the proper complainant is the 9th respondent itself and it cannot be the petitioner. (See *Prudential Assurance Co Ltd v. Newman Industries Ltd (No. 2)* [1982] 1 All ER 354). The court will not ordinarily interfere with the internal management of the company which are being managed honestly and in accordance with law. (See *Re Bright Pine Mitts Pty Ltd* [1969] VR 1002). If the acts in question affect the complainant in some capacity other than as member, he has no right to maintain an action and seek remedy under s. 181 of CA 1965. (See *Re HR Harmer Ltd* [1958] 3 All ER 689).

(m) The petitioner will have no cause of action and remedy if he cannot demonstrate the "affairs of the company" are being conducted in a manner oppressive to themselves as minority shareholders. In *Scottish Co-operative Wholesale Society Ltd v. Meyer* [1958] 3 All ER 66, Lord Morton stated:

> ... but, as I have already pointed out, the respondent can only bring themselves within s. 210 of the Act of 1948 if they prove that the affairs of the company whereof they are members are being conducted in a manner oppressive to themselves as minority shareholders. They cannot succeed, in my opinion, merely by proving that the affairs of another company are being so conducted, even if that other company holds the majority of shares in the company whereof the respondents are members and nominees of the majority of its directors. It may be unfortunate that this form of oppression is not covered by the section; but this is, to my mind, the inevitable result of the words "the affairs of the company are being conducted."

(n) It is my finding that the petitioner has not shown that the alleged wrong doers have acted in such a way that they have breached the provisions of s. 181 of CA 1965 in that they have been conducting or are exercising: (a) the affairs of the 9th respondent; or (b) the powers of the directors; either (i) in a manner oppressive to one of the members including the petitioner; or (ii) in disregard of the petitioner's interest or other members' interests.

The legal test as to what amounts to oppression has been succinctly stated in *Re Kong Thai (supra)* as whether there has been conduct which is a visible departure from standards of fair dealing ie, whether, the conduct complained of was burdensome, harsh and wrongful. Section 181(a) also contains the words "disregard": (i) an awareness of the interest and (ii) a deliberate decision to ignore it. On the facts of the case, it is my finding that a case for oppression has not been made out. The petitioner in this case is highly respected by the 1st respondent and other shareholders. This is evidence by the fact that they have not removed him as a director.

[18] *En passant,* I will say that the petitioner must have undoubtedly contributed much for the success of the 9th respondent. In consequence, though he is a minority shareholder, the majority members out of respect and tribute to his contribution have not removed him as a director or refused his participation, in the management of the company. The 1st respondent on his part has not made any allegation against the petitioner in all his affidavits to make it impossible for them to reconcile with their difference and continue to bring great economic success to the 9th respondent and thereby boost the

income and achievement of all those who are dependent on the success of the 9th respondent, inclusive of the public who will benefit from the taxes collected from the 9th respondent. I think it is essential and necessary for all true well wishers of the petitioner and the 1st respondent to make efforts to reconcile the two rather than continue to litigate the issues.

[19] For reasons stated above, I can only make two orders that is to dismiss the petition with costs to the respondents. Many documents have been involved in this case and much time would have been spent by the respective solicitors. For that reason, I take the view that the getting up fees for each group of solicitors should not exceed RM100,000. If costs cannot be agreed the respondents are at liberty to tax their costs. I hereby order so.